



U. S. Fish and Wildlife Service

Proposed rule to designate an additional Federal Manatee Protection Area in Lee County, Florida Frequently Asked Questions

Updated August 5, 2004

Q1: Why are you proposing to designate a Federal manatee protection area at this time?

A1: The Service is proposing a rule to designate an additional manatee protection area in Lee County after carefully assessing:

- the impacts the recent State court rulings and decisions have had on manatee protection, and
- the best available information for evaluating interactions between manatees and humans at these five sites.

Regulations require the Service to initiate the process to make these Federal designations permanent within 10 days of publishing the Emergency Designation rule which is temporary and lasts only 120 days. Once the emergency designation expires which is currently in effect until December 6, 2004, the Service believes that these areas will not be protective for manatees, hence, a permanent manatee refuge is needed to protect manatees from imminent take.

Q2: What is “take”?

A2: “Take”, as defined by the Endangered Species Act, means “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct.”

- The Service defines “harass” as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering.
- The Service defines “harm” to include significant habitat modification or degradation that actually results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding or sheltering.

Manatees also receive Federal protection under the Marine Mammal Protection Act, which is administered by the National Oceanic and Atmospheric Administration, or NOAA. This act has similar definitions of take and harassment.

Q3: What is a manatee refuge?

A3: Manatee refuges are areas where **certain** waterborne activities may be restricted or prohibited to prevent injuring or killing one or more manatees. Waterborne activities that may be restricted include, but are not limited to, swimming, diving (including skin and SCUBA diving), snorkeling, water skiing, surfing, fishing, the use of water vehicles, and dredging and filling operations. For an area designated as a manatee refuge, the regulation will state which, if any, waterborne activities are prohibited, and state the applicable restrictions. Designation of manatee refuges will not eliminate waterway property owner access rights. Public and private property owners and their designees would be permitted watercraft access and allowed to maintain property and waterways when their property is located in a

manatee sanctuary or refuge. Any authorized boating activity in the refuges would be conducted by operating watercraft at less than slow speed. Maintenance activities would be allowed, subject to any Federal, State or local permitting requirements.

Q4: What is your legal authority to establish a manatee refuge?

A4: The authority to establish protection areas for the Florida manatee is provided by the *Endangered Species Act* and the *Marine Mammal Protection Act*. The Service may establish manatee protection areas, also known as sanctuaries or refuges, whenever there is substantial evidence showing that these areas are necessary to prevent take of one or more manatees.

Q5: Will the public have an opportunity to participate in the proposed rule process?

A5: Yes. The Service is seeking public comments on our proposed regulation. Specifically, the Service would like to know: (1) the reasons why any of these areas should or should not be designated as a manatee refuge, including data that supports any changes; (2) current or planned activities in the subject areas and their possible effects on manatees; (3) any foreseeable economic or other impacts resulting from the proposed designation; (4) potential adverse effects to the manatee associated with designating a manatee protection area for the species; (5) any actions that could be considered in lieu of, or in conjunction with, the proposed designation that would provide comparable or improved manatee protection; and (6) suggested modifications to the proposed refuge boundaries and reasons for these suggested modifications.

Q6: What are the next steps in this process?

A6: The Service will have a public comment period and assess these comments before making a final decision. If the State or local government reinstates the protection zones, the Service will consider withdrawing its proposal.

Q6: What will the Service do if the State is successful in appealing the lower State court's ruling? What will the Service do if the State eventually redesignates its previous manatee protection zones? What if the county takes similar action?

A6: If any of these scenarios occurs, the Service will consider withdrawing its Federal designation of the five areas as a Federal manatee refuge.

Q7: Where is the Federal manatee refuge located?

A7: The areas affected by this proposed designation are in Lee County, in the vicinity of Matlacha Pass, Estero Bay, southwest side of Pine Island, eastern San Carlos Bay and the mouth of the Caloosahatchee River. These areas correspond exactly to the previous manatee protection zones established by the State of Florida.

A highly detailed description of the boundaries of the Pine Island-Estero Bay Manatee Refuge can be found in today's *Federal Register*. It is also available at the Service's web site: verobeach.fws.gov.

The regulation and additional information on this action is available on the Service's web site at verobeach.fws.gov, or may be requested by writing via e-mail to verobeach@fws.gov; by faxing your request to 772-562-4288; or by letter to USFWS, Attn: Proposed MPA Rule, 1339 20th Street, Vero Beach, FL 32960. If you have specific questions or need special assistance, please contact the Service's South Florida Field Office at 772-562-3909, extension 248.

Q8: How will the areas be marked?

A8: The signs designating the former State zones are being updated to reflect the new Federal designation. Additional signs may be put in place to better delineate the Federal refuge if it becomes permanent.

Q9: Does the Fish and Wildlife Service have enough people to post and enforce these areas?

A9: Yes. The Service is committed to posting and enforcing any manatee protection area that it designates. In addition, the State has also committed to increasing its law enforcement efforts for manatee protection.

Q10: How is “slow” speed defined in these regulated areas?

A10: “Slow” speed is defined as the speed at which the watercraft proceeds fully off plane and is completely settled in the water. Since watercraft of different sizes and configurations may travel at different speeds, a specific speed is not assigned. However, a watercraft is NOT proceeding at slow speed if it is - (1) on plane, (2) in the process of coming up on or coming off of plane, or (3) is creating an excessive wake. A watercraft IS proceeding at slow speed if it is fully off plane and completely settled in the water, not plowing or creating an excessive wake. Protection areas may also carry a channel qualifier, exempt or included. In such instances this refers to the existing marked navigational channel.

Q11: The State 20th Judicial Circuit Court did not invalidate the State’s restrictions of 25-mph in the channels. Why are these areas included in the Service’s proposed designation?

A11: Encompassing all the areas, including the channels, will make it easier to post and less confusing to the boating public.

Q12: What about state exemption holders such as commercial fishermen and fishing guides?

A12: There are no provisions for allowing these exemptions under Federal law. Business and individuals previously holding State exemptions in these areas should be aware that they are not valid in the Federal zones. This is the only difference between the Federal designation and the previous State designation.

Q13: Are you singling out watercraft as the only cause of manatee mortality?

A13: No. The Service acknowledges that watercraft-related mortality is not the only cause of manatee deaths. It is, however, the number one cause of human-related manatee deaths. Manatee protection areas offer us an opportunity to implement sound, effective risk-reduction management actions. Adult survival rates are one of the key criteria the Service considers in evaluating the success of recovery efforts. Establishing these protection areas is expected to have a significant impact on overall adult manatee survival rates.

Q14: Will the proposed designation affect the Service’s evaluation of new watercraft access permits in Lee County?

A14: No.

Q15: Will designation of a site as a manatee refuge restrict my access to Florida’s waterways?

A15: Manatee protection areas are not intended to create blanket access restrictions to Florida’s waterways. However, there would be some level of impact. The types of prohibited or restricted waterborne activities and the schedules for them will vary from site to site, and may be seasonal in nature. In all cases, manatee refuges will not eliminate waterway property owner access rights.

Q16: Will this proposed designation of a manatee protection area affect property rights?

A16: No. Designation of manatee refuges will not eliminate access rights for property owners on waterways. Public and private property owners and their designees would be permitted watercraft access. They could also maintain their property and its waterways if the property becomes part of a manatee refuge. Any authorized boating would be conducted at slow speed in the refuge area, as posted.

Q17: Do you consider economic and quality-of-life impacts on citizens when making final site selections?

A17: Yes. The Service considers waterway access, impact on commercial and recreational waterway uses, as well as community economic impacts in reaching final decisions. Under the emergency designation process, these factors can be considered as long as the basic purpose of the emergency site designations – reducing or eliminating the take of manatees – is achieved.

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